

## REMARKS/ARGUMENTS

Claims 1-4, 11- 26, 28, 29, 33, 34, 38, 39, and 42-47 are pending in the present application, of which claims 1, 4, 11-13, 16-19, 22-26 and 42-47 are the independent claims. Applicant believes that the present application is in condition for allowance, for which prompt and favorable action is respectfully requested.

### *Allowable Subject Matter*

Applicant greatly appreciates the indication that claims 11, 12, 16, 18, 22 and 24 are allowed.

### *Unaddressed Claims*

Applicant notes that the Office Action Summary indicates claims 44-47 are rejected. However, claims 44-47 are not addressed in the final Office Action. Specifically, no grounds of rejection are given for these claims. Applicant respectfully requests the Examiner provide the grounds of rejection or indicate whether a different disposition was intended.

### *Claim Rejections – 35 USC § 102*

Claims 1-4, 13-15, 17, 19-21, 23, 25, 26, 28, 29, 33, 34, 38 and 39 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tiedemann (U.S. 6,396,867). Reconsideration and withdrawal of this rejection are respectfully requested.

MPEP § 2131 states that “[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added). MPEP § 2131 also states that “[t]he identical invention must be shown in **as complete detail** as is contained in the ... claim” and “[t]he elements must be **arranged as required by the claim.**” (emphasis added). MPEP § 2112 (IV) states that in order to “establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” MPEP § 2112 (IV) also states that inherency “may **not be established by probabilities or possibilities.**” In the present case, Applicant submits that Tiedemann does not meet this high burden for establishing anticipation under 35 U.S.C. § 102.

Independent claims 4, 13, 17, 23, 25, 26, 42 and 43 each includes the features of receiving or transmitting a forward link power control instruction on a forward link common

channel, wherein the forward link common channel is shared by a plurality of remote stations. Tiedemann does not disclose at least the features of receiving or transmitting a forward link power control instruction on a forward link common channel, wherein the forward link common channel is shared by a plurality of remote stations, and therefore does not anticipate independent claims 4, 13, 17, 23, 25, 26, 42 and 43.

The Office Action cites reference number 10, col. 7, lines 19-26, col. 8, 46-63, col. 7, lines 31-57 and the Abstract of Tiedemann as allegedly disclosing the above features of claims 4, 13, 17, 23, 25, 26, 42 and 43. See pages 3 and 4 of the Office Action. Applicant respectfully disagrees.

To begin, reference number 10 of Tiedemann refers to multiple signal paths of a data transmission from a base station 4 to a remote station 6 due to signal reflections. See col. 8, lines 33-45 of Tiedemann (“Data transmission from base station 4 to remote station 6 occurs on the forward link through signal paths 10 ... [t]he signal path can be a straight path ... or a reflected path...”). Reference number 10 of Tiedemann in no way refers to a forward link common channel that is shared by a plurality of remote stations.

Col. 7, lines 19-26 of Tiedemann discloses determining “the quality of the forward link signal, as received by the remote station, by measuring the amplitude of the reverse link power control bits which are transmitted on the forward traffic channel.” Col. 8, lines 43-63 of Tiedemann discusses the encoder 22 in the base station 4 with reference to Figures 2 and 3 of Tiedemann. Col. 7, lines 31-57 of Tiedemann discloses that “power control bits can be transmitted from multiple base stations within the communication system.” The Abstract discloses that “[a]t the remote station, reverse link power control bits from multiple base stations or multiple signal paths are measured, combined, and filtered to yield improved measurement of the forward link signal quality.”

However, nowhere in these cited passages or anywhere else does Tiedemann disclose receiving or transmitting a forward link power control instruction on a forward link common channel that is shared by a plurality of remote stations. For instance, nowhere does Tiedemann disclose that the “forward link” or the “forward traffic channel” discussed in the cited passages comprises a forward link common channel that is shared by a plurality of remote stations.

Rather, the cited passages of Tiedemann disclose receiving power control bits from multiple base stations or from multiple signal paths at a remote station. Receiving power control

bits from multiple base stations or from multiple signal paths at a remote station does **not** in anyway disclose a forward link common channel that is **shared** by a plurality of remote stations.

Further, the present Office Action fails to provide any explanation of how the cited passages of Tiedemann allegedly disclose a forward link common channel that is **shared** by a plurality of remote stations. Applicant submits that the Board of Patent Appeals and Interferences recently found that an Office Action's mere citation to passages of a reference in support of a § 102 rejection without providing an explanation constitutes reversible error. In *Ex parte Dykes*, the BPAI stated:

[h]ere, the Examiner has **merely directed our attention** to an 'EJB Type' column in Beust and thus has **not clearly shown** and has left it up to us to speculate as to how this column in Beust defines resource references within a session EJB. We can only rule on the basis of the evidence that is provided in support of the rejection, and here we find it deficient. The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. § 102. *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). The one who bears **the** initial burden of presenting a prima facie case of unpatentability is the Examiner. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Therefore, we find that the Examiner has *not* set forth a sufficient initial showing of anticipation, and we find that Appellants have shown error in the Examiner's rejection of claims 2 and 10."

See *Ex parte Dykes et al.*, Appeal No. 2009-7556 (BPAI) (emphasis added). A copy of this decision was attached to Applicant's previous response.

For at least the reasons given above, Applicant submits that Tiedemann clearly does not disclose receiving or transmitting a forward link power control instruction on a forward link common channel that is **shared** by a plurality of remote stations, and therefore does not anticipate claims 4, 13, 17, 23, 25, 26, 42 and 43.

Independent claims 1 and 19 each includes the features of an apparatus receiving a forward link power control instruction on a forward link common channel wherein the apparatus **shares** the forward link common channel with at least one remote station. Tiedemann fails to disclose the above features of claims 1 and 19 for similar reasons given above for independent claims 4, 13, 17, 23, 25, 26, 42 and 43.

Therefore, Tiedemann fails to anticipate independent claims 1, 4, 13, 17, 19, 23, 25, 26, 42 and 43.

In response to Applicant's previous arguments, the Office Action asserts:

[T]he applicant states that the prior art cited does not specifically disclose a forward link power control instructions on a forward link common channel wherein the apparatus shares the forward link common channel with at least one remote station. The examiner cites the claim limitation with at least one remote station is read upon by the citation of Tiedemann in the prior Office Action, specifically passages (Col. 7, line 19-26) and (Col. 8, 46-63).

See page 2 of the Office Action.

The Office Action fails to address the substance of Applicant's previous arguments. According to MPEP § 707.07(f) "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and **answer the substance of it**" (emphasis added). In Applicant's previous response, Applicant provided arguments why the cited passages of Tiedemann do not disclose the above features of claims 1, 4, 13, 17, 19, 23, 25, 26, 42 and 43. However, the Office Action fails to address the substance of Applicant's previous arguments, as required by MPEP § 707.07(f). Instead, the Office Action merely cites the same passages of Tiedemann.

Further, the Office Action's assertion that "the claim limitation with at least one remote station is read upon by the citation of Tiedemann in the prior Office Action" fails to address the feature of the "forward link common channel is shared by a plurality of remote stations" recited in claims 4, 13, 17, 23, 26 and 43. (emphasis added).

For at least the reasons given above, Applicant submits that independent claims 1, 4, 13, 17, 19, 23, 25, 26, 42 and 43 are allowable, and respectfully requests that the rejection of claims 1, 4, 13, 17, 19, 23, 25, 26, 42 and 43 be withdrawn.

The other rejected claims currently under consideration in the application are dependent from their respective independent claims discussed above and therefore are believed to be allowable over the applied references for at least similar reasons. Because each dependent claim is deemed to define an additional aspect of the invention, the individual consideration of each on its own merits is respectfully requested. Reconsideration and withdrawal of the rejections of the dependent claims are respectfully requested.

### CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated September 9, 2011

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